IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2026 OF 2003
IN
SUIT NO.1996 OF 2003

Rabo India Finance Pvt.Ltd. ....Plaintiff
V/s.
Lanlard Foods Ltd. & Ors. ....Defendants

Mr.Virag Tulzapurkar i/b M/s.Junnarkar Associates for the Plaintiff.
Mr.R.S. Tripathi for Defendant Nos.1 to 5.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover an amount of about Rs.40.00 crores together with interest. It is not necessary to deal with each of the documents in detail as most of the documents are admitted. That the amount now in excess of Rs.40.00 crores is due and payable to the Plaintiff is admitted. That the securities, which I shall short refer to, were created are admitted. That the amount has not been repaid is admitted.

2. Defendant No.1 is the principal borrower. Defendant Nos.2 to 6 are the guarantors. Defendant No.1 has agreed to create an equitable mortgage in

respect of the immovable property described in Exhibit-SS to the plaint. The agreement to do so is admitted and is evidenced inter-alia by Exhibit-T to the plaint which is a copy of the minutes of the meetings between the parties held on 25th June, 2000.

3. Defendant No.1 has also hypothecated various goods as per the Deed of Hypothecation dated 29th June, 2000 (Exhibit-B to the plaint). Defendant Nos.3 and 5 have pledged the shares held by them of Defendant No.1.

4. There is thus no defence to the monetary claim by Defendant Nos.1 to 6.

5. Defendant Nos.8, 9 and 10 are State of Saurashtra, Punjab National Bank and Bank of Rajasthan. They have supported the Plaintiff so far as this Notice of Motion is concerned.

6. A security in respect of edible oil was also created in favour of the Plaintiff. That edible oil was stored in the warehouse of Defendant No.7 pursuant to an agreement dated 22nd February, 1999. There were disputes between the Plaintiff and Defendant No.7. The Plaintiff contends that Defendant No.7 wrongly

parted with possession of the edible oil which was its security.

7. By an order dated 5th October, 2004, D.G. Deshpande, J. referred the disputes between the Plaintiff and Defendant No.7 arising out of the said agreement dated 22nd February, 1999 to arbitration. By the said order the Plaintiff and Defendant No.1 were directed to refer the disputes regarding the claim of the Plaintiff against Defendant No.7 to arbitration.

8. Mr.Tripathi contended that the order dated 5th October, 2004 stayed the entire suit. The contention is ex-facie untenable, based on a total misconstruction of paragraph Nos.12, 13 and 14 thereof which, as corrected by a further order dated 29th October,2004, read as under :-

> "12. ..... In the circumstances the motion is required to be allowed and the dispute between the plaintiff and defendant No.7 is required to be referred for arbitration under the provisions of clause 12 of the Collateral Management Agreement (Exhibit-G).
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> 13. When I had questioned the advocates for the parties in this regard while hearing the arguments, they pointed out that the Court will have to decide as to what is the

> dispute between the parties that is referred to arbitration. Therefore, it is clarified that all the disputes arising between the plaintiff and defendant No.7 arising out of Collateral Management Agreement (Exhibit-G) and for which the plaintiff has claimed a decree against defendant No.7 as per prayer clause (b) are required to be referred to arbitration."
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> 14. In the result, the motion is allowed. The plaintiff and defendant No.1 are directed to refer the disputes to arbitration and the dispute is about the claim of the plaintiff against defendant No.7 as per prayer clause (a) under Clause XII of the Collateral Management Agreement (Exhibit G to the plaint)."

9. The Plaintiff has preferred a Special Leave Petition before the Supreme Court from the order.

10. It is admitted that the disputes and differences between the other Defendants have not been referred to arbitration. That it is necessary to protect the interest of the Plaintiff is beyond doubt and was not seriously disputed by the advocates appearing on behalf of the Defendants. Two contentions were raised on behalf of Defendant Nos.1 to 5.

11. Firstly, it was submitted that by the said

order dated 5th October, 2004 the entire suit against all the Defendants has been stayed. I am unable to agree. The reference to "prayer (b)" in paragraphs 13 and 14 of the order dated 5th October, 2004 is clearly to the prayer clause in the plaint. The said paragraphs do not even refer to any submission regarding staying the entire suit. This is further clear from the words "..... for which the Plaintiff has claimed a decree against Defendant No.7 as per prayer clause (b)....." Thus the reference is to the decree claimed by prayer (b) in the plaint. A reference to prayer (b) of the plaint makes this clear. In prayer (b) of the plaint, a decree has been sought against Defendant No.7 for payment of about Rs.40.00 crores.

12. It was also contended that the suit is barred by limitation. The contention is without any substance. There are various documents by which the Defendants clearly acknowledged their liability. Thus the acknowledgments were during the subsistence of the period of limitation. For example, Exhibit "JJ" is a letter dated 26th July, 2000 wherein an outstanding payment to the extent of Rs.25.00 crores is admitted and in fact Defendant No.1 has requested time to make payment.

13. As far as the shares pledged by Defendant Nos.3 and 5 are concerned an injunction would suffice as the shares are of Defendant No.1.

14. As far as hypothecated goods are concerned, it is admitted that they are mainly perishable items which left unutilized would deteriorate in value rapidly. This would be to the prejudice of all the parties. Defendant Nos.8, 9 and 10 have no objection if the hypothecated goods other than book-debts are sold and the net sale proceeds be deposited in Court and invested.

15. This leaves for consideration the immovable property. Mr.Tripathi stated that the immovable property was lying unused. The appointment of the Court Receiver would therefore not merely benefit the Plaintiff but also Defendant No.1 as I intend ordering the Court Receiver to appoint an agent in respect thereof. The same will not only not prejudice any of the parties but would in fact generate income which would enure to the benefit of all the parties.

16. In the circumstances, the Notice of Motion is made absolute in terms of prayer (a), except in so far

as it relates to the shares and book-debts. Further the immovable property shall not be sold by the Court Receiver. Till the Court Receiver takes possession of the aforesaid properties, there shall be an injunction in terms of prayers (b), (c), (e) and (f). The aforesaid injunction will however continue to operate even after the Court Receiver takes possession of the aforesaid properties in respect of the pledged shares and book-debts. It is clarified that the Court Receiver shall appoint third parties as his agent in respect of the immovable properties on usual terms and conditions.

17. The order is stayed for a period of four weeks from today to enable Defendant No.1 to carry the matter higher.